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Kenneth E. Flick

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05/15/2008

ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P.A.  
1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE  
P.O. BOX 3791  
ORLANDO, FL 32802-3791

EXAMINER

BROOKS, MATTHEW L

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/085,403  
Filing Date: February 28, 2002  
Appellant(s): FLICK, KENNETH E.

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Omega Patents, L.L.C  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed November 07, 2007 appealing from the Office action mailed 12/21/2006 and Pre-Brief Appeal Conference decision sent 3/16/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is now aware of judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The Applicant in Appeal Brief has identified themselves as Omega Patents, a quick search revealed that there has been multiple lawsuits in relation to the technologies claimed in present application (see attached). There it states that "AST will license Omegas patents to produce and distribute certain *remote control products*." Also, found attached as LawSuit1 is evidence of suit filed recently as September of 2007 (see attached). Applicant nowhere in record has identified any other applications/patents currently pending or otherwise.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,526,335

Treyz et al.

2-2003

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-32** are rejected under 35 U.S.C. 102(e) as being anticipated by Patent No.: 6,526,335 (Treyz).

3. With respect to **Claim 1**: Treyz discloses:

A method of providing a customer-selected remote control feature package in a vehicle, the method comprising:

(a) installing a universal remote control device in the vehicle (Fig 7), the universal remote control device comprising a controller and a wireless receiver cooperating therewith for permitting wireless enabling the customer-selected remote control feature package from among a plurality of possible remote control feature packages (Fig 17 and Treyz throughout and at C1, 58-65 teaches software install on the automobile personal computer, software in and of itself enables features, Treyz also teaches the automobile personal computer controls everything from remote key chain (C23, 1-23) to GPS (C1, 35-45) and in addition teaches wireless enabling at C19, 3-12);

(b) negotiating sale or lease of the vehicle with the customer and comprising

- (i) offering the plurality of possible remote control feature packages the customer (C2, 52-65 "price negotiate" Fig 12 and Fig 14), and
- (ii) accepting an order for the customer-selected remote control feature package from the customer (C2, 52-65 "commitment made" and Fig 12 and Fig 14); and

(c) wirelessly enabling the customer-selected remote control feature package for the universal remote control device (C19, 3-12 and Fig 12, 294 and Fig 14 and Treyz teaches the automobile personal computer controls everything from remote key chain (C23, 1-23) to GPS (C1, 35-45) and in addition teaches wireless enabling at (C19, 3-12 and throughout entire specification). GPS is defined in the specification as one of the options of the "remote control feature package" and Treyz shows user in possession of

vehicle with computer in it plus downloading software wirelessly which enables new features [Fig 12 and 14 and C2, 52-65 and C 57, 7-20]).

4. With respect to **Claim 16**: Treyz discloses:

A method of providing a customer-selected remote control feature package in a vehicle, the method comprising:

All of limitations as discussed in claim 1 above plus

(e) wherein providing, installing, negotiating and wirelessly enabling are performed by a plurality of different entities and further comprising sharing revenue among the different entities based on the negotiated customer-selected remote control feature package (This is what a TPCD does; Treyz shows "TPCD"/processing center [C23, 1-23 and C57, 1-60 and C58, 5-10] and The fact that Treyz teaches a computer/box/URCD and that at any/some point a purchaser of the device is negotiating for svcs/RMCF (C2, 50-60) and then having the requested services wirelessly enabled, wherein the services taught by Treyz are GPS/key remote etc).

5. With respect to **Claim 2 and 17**: Treyz discloses

delivering the vehicle to the customer after negotiating and prior to wirelessly enabling (Treyz shows user in possession of vehicle with computer in it plus downloading software wirelessly which enables new features [Fig 12 and 14 and C2, 52-65 and C 57, 7-20]).

6. With respect to **Claim 3 and 18**: Treyz discloses

installing is performed prior to negotiating (Treyz shows negotiation before and after installing (C2, 52-65 and C 57, 7-20)).

7. With respect to **Claim 4 and 19**: Treyz discloses  
wherein installing is performed after negotiating (Treyz shows negotiation before and after installing (C2, 52-65 and C 57, 7-20)).
8. With respect to **Claim 5**: Treyz discloses  
wherein the plurality of possible remote control feature packages have respective different offering prices; and wherein the customer-selected remote control feature package has a negotiated price associated therewith (Treyz teaches wireless enabling of remote control feature packages, certainly/inherently they must have different offer prices depending upon package type/ what is ordered [C2, 52-65 and C 57, 7-20]. AND Treyz teaches negotiating prices for services [C2, 52-65 and C 57, 7-20]).
9. With respect to **Claim 6**: Treyz discloses  
negotiating and wirelessly enabling are performed by respective different entities; and further comprising sharing revenue between the different entities and based on the negotiated price for the customer-selected remote control feature package (This is what a TPCH does; Treyz shows "TPCH"/processing center [C23, 1-23 and C57, 1-60 and C58, 5-10]).
10. With respect to **Claim 7**: Treyz discloses  
providing the universal remote control device; wherein the installing, negotiating, and wirelessly enabling are provided by respective different entities; and further comprising sharing revenue between the different entities and based on the negotiating price for the customer-selected remote control feature package (This is what a TPCH

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does; Treyz shows "TPCH"/processing center [C23, 1-23 and C57, 1-60 and C58, 5-10]).

11. With respect to **Claim 8 and 20**: Treyz discloses

wherein the providing and wirelessly enabling are provided by a same entity (C22, 45-57 "single service provider").

12. With respect to **Claim 9 and 21**: Treyz discloses

wherein negotiating is performed by a vehicle dealer; and wherein installing is performed after vehicle delivery to the vehicle dealer (Treyz shows multiple ways of installing a personal computer/"universal remote control device" in car [C13, 12-37] including after delivery to user/manufacture/vehicle dealer/"third party installer" [C13, 12-37 and C16, 35-47 and C17, 14-27 and C18, 40-65 user/manufacture/vehicle dealer/"third party installer"]).

13. With respect to **Claim 10 and 22**: discloses

wherein negotiating is performed by a vehicle dealer; and wherein installing is performed prior to vehicle delivery to the vehicle dealer (Treyz shows multiple ways of installing a personal computer/"universal remote control device" in car [C13, 12-37] including after delivery to user/manufacture/vehicle dealer/"third party installer" [C13, 12-37 and C16, 35-47 and C17, 14-27 and C18, 40-65 user/manufacture/vehicle dealer/"third party installer"]).

14. With respect to **Claim 11 and 23**: Treyz discloses

installing comprises installing the universal remote control device perform at least one of security, remote keyless entry and remote engine starting features associated



with respective customer-selected remote control feature packages (C16, 35-47 and C2, 1-5 and Fig 17, 356).

15. With respect to **Claim 12 and 24**: Treyz discloses  
security comprises vehicle position tracking (C1, 35-45 and C2, 24-30).
16. With respect to **Claim 13**: Treyz discloses  
the universal remote control device comprises a GPS receiver for performing the vehicle position tracking (C1, 37-45).
17. With respect to **Claim 14 and 25**: Treyz discloses  
the wireless receiver comprises a cellular radio receiver; and wherein the wirelessly enabling comprises using a cellular radio transmitter (Fig 11 and C18, 40-68 and C17, 14-26 and Fig 12, 294).
18. With respect to **Claim 15 and 26**: Treyz discloses  
the vehicle comprises a data communication bus extending there through; and wherein installing comprises connecting the universal remote control device to the vehicle data communication bus (C15, 40-47 “communications bus”).
19. With respect to **Claim 27**: Treyz discloses  
A system for providing a customer-selected remote control feature package in a vehicle, the system comprising:  
(a) a universal remote control device for installation in the vehicle, said universal remote control device comprising a controller and a wireless receiver cooperating therewith for permitting wireless enabling of the customer-selected remote control

feature package from among a plurality of possible remote control feature packages (Fig 17 and C18, 40-69); and

(b) customer-selected remote control feature package processing station for

(i) receiving an order for the customer-selected remote control feature package (Fig 16, 352 and “TPCH” discussed above),

(ii) wirelessly enabling the customer- selected remote control package for the universal remote control device based upon the order (C18, 40-69), and  
(iii) sharing revenue among different entities based upon the customer-selected remote control feature package (C18, 40-69).

20. With respect to **Claim 28**: Treyz discloses

customer-selected remote control feature package processing station comprises an accounting database for sharing the revenue (C22, 54-56).

21. With respect to **Claim 29**: Treyz discloses

universal remote control device performs at least one security, remote keyless entry and remote engine starting features associated with respective customer- selected remote control feature packages (Fig 17).

22. With respect to **Claim 30**: Treyz discloses

universal remote control device comprises a GPS receiver for performing vehicle position tracking (C1, 36-47).

23. With respect to **Claim 31**: Treyz discloses

wireless receiver comprises a cellular radio receiver; and wherein said processing station wirelessly enables the customer-selected remote control feature package using a cellular radio transmitter (C12, 21-44).

24. With respect to **Claim 32**: Treyz discloses

the vehicle comprises a data communication bus extending there through; and wherein said universal remote control device interfaces to the vehicle data communication bus (Fig 7 and C16, 40-47).

#### **(10) Response to Argument**

The arguments addressed begin on page 8 of 22.

In reply to: first and only argument/assertion presented at top of page 10 that Treyz does not have "the ability to wirelessly enable remote control features". This is merely not true. Treyz does wirelessly enable features. Treyz teaches the automobile personal computer controls everything from remote key chain (C23, 1-23) to GPS (C1, 35-45) and in addition teaches wireless enabling at C19, 3-12). GPS is defined in the specification as one of the options of the "remote control feature package" Applicant offers.

Further on the same argument, Applicant on preceding page 9, of his argument admits that Treyz "discloses the ability to remotely subscribe to *digital satellite radio services*, (Col. 22, lines 20-34)" AND the ability to remote order. This admission in and of itself is enough to defeat Applicant's following argument, given that digital satellite

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radio services included remote control feature packages (see OnStar 1 and 2, OnStar offered tracking/GPS and remote door unlock).

In reply to: page 11, because Applicant failed to address Examiners Response to Arguments paragraph bridging pages 10 and 11 on OA dated 12/11/06 that "It is implicit/inherent/ taught in the reference and known to all business people/carsales men/ lay person that have been involved with the sale of nearly every type of product there are negotiations as to price. This is most notorious in the sale of cars and associated add-ons/remote control features associated therewith. The fact that Treyz teaches a computer/box/URCD that at any/some point a purchaser of the device is negotiating for svcs/RMCF and then having the requested services wirelessly enabled, wherein the services taught by Treyz are GPS/key remote etc; and this alone falls within the metes and bounds of Applicants claimed invention and thus by definition is an anticipation of the claims."

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

MLB

4/12/08

Conferees:

John Weiss

/John G. Weiss/

Supervisory Patent Examiner, Art Unit 3629

Dean Nguyen

/Dean Nguyen/

Primary Examiner, Art Unit 3689